IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

ORDER.

M/s Manish Auto Service Centre Vs. Union of India & ors.

S.B. Civil Writ Petition No.5945/2004 under Article Article 226 of the Constitution of India.

Date of Order: March 23, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. Vineet Kothari for the petitioner.

Mr. M.S. Singhvi, for respondent no.2.

BY THE COURT:

The petitioner is running a petrol pump since 1976 situated 100 meters away from the Dabok Choraha, Tehsil Mavali District, Udaipur. The grievance of the petitioner is that respondent no.2-National Highway Authority of India is constructing four lane National Highway No.76 which is running near to the petrol pump of the petitioner and this part of the highway is Udaipur-Chittorgarh. The petitioner has not raised grievance against the construction of the National High way into

four lanes but the grievance of the petitioner is that the authorities are deliberately putting up railing just opposite to the petrol pump of the petitioner and not providing any entrance for the petrol pump and thereby, the petitioner is likely to suffer his business completely.

According to the petitioner, all has been done for extraneous considerations and motives and in discriminatory manner which is clear from the fact that for other similarly situated petrol pumps and even workshops and resort hotels, the authorities have left the highway road open providing free and proper access to such outlets but in the case of petrol pump of the petitioner, they are not doing so on the pretext that there is separate service lane on the road side leading to the petrol pump of the petitioner, which according to the petitioner, starts from about 1 km. prior to the petrol pump. According to the petitioner, the petitioner submitted several pleas before the respondents and requested them not to put the obstruction by way of iron railings between the highway road closing the access to the petitioner's petrol pump but no relief has been granted by them. The petitioner placed on record the photographs of the petitioner's petrol pump with the marks how the vehicles will come out from the petrol pump of the petitioner and also placed on record the photographs of the resort and surrounding areas with the photographs of one school to show that the respondent

left the road open towards the resort and even a small school. It will be worthwhile to mention here that the petitioner also filed a civil suit for seeking relief of injunction.

The respondent no.2-National Highway Authority of India submitted reply to the writ petition and submitted that the writ petition of the petitioner is liable to be dismissed as the petitioner deliberately stated wrong facts and one of which is that the petitioner alleged that service lane connecting the petitioner's petrol pump from the highway is 1 km. long whereas it is only approximately 125 meters. It was also submitted that in view of having invoked the remedy of civil suit, the writ petition filed by the petitioner is not maintainable. The petitioner failed to show violation of any his legal rights or corresponding legal duty cast upon the answering respondent which is sought to be enforced by the petitioner.

According to the respondent, the highway in question is a part of Golden Quadrilateral which is being constructed as a National Project. The Parliament has enacted the Control of National Highways (Land and Traffic Act), 2002 and Section 30 of the above Act of 2002 provides that it is the discretion of the highway administration to regulate and divert any proposed or existing access to the highway. Section 30 of the

aforesaid Act of 2002 reads as under:-

> **"30. Regulation of diversion of access, etc.-** (1) Notwithstanding any permission given under sub-section (1) of sub-section (2) of section 29, the Highway Administration shall have the power in the interest of the safety and convenience of the traffic to refuse, regulate or divert any proposed or existing access to the Highway.
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> (2) Where an existing access is diverted, the alternative access given in lieu thereof shall not be unreasonably distant from the existing access."

The guidelines have been provided in the Indian Road Congress, 1996 at para 7.4, which are as under-

> **"Accesses to private property**
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> 7.4. Individual driveways to private property such as petrol pumps, farms, commercial establishments, and industries should not be spaced closer than 300 meters from each other or from an intersection. As far as possible, a number of property owners along the highway should be grouped together and parallel service roads (i.e. Frontage roads) constructed to give access at selected points. The geometrics of the driveways should conform to requisite standards conducive to smooth traffic flow."

In view of the above powers conferred by Section 30 and in view of the guidelines No.7.4 issued by the Indian Road Congress, 1996, the answering respondent is raising a construction of the highway by strictly following the guidelines and has right to regulate or divert even existing

access to highway. Therefore, no fault can be found out from the action of the respondent. It is also submitted that there are allegations of discrimination and extraneous considerations against the respondent no.2 but they are vague and hence deserves to be dismissed, apart from the fact that the allegations are false. Learned counsel for respondent no.2 referred the map(Annx.R/2/1) as well as photographs placed on record as Annx.R/2/2. According to the learned counsel for the respondent no.2, the norms have been fixed for new roads which provides that "in case of service roads having been constructed, the access to the fuel station shall be from service roads and not from the main carriageway" and it is admitted case of the even petitioner that in either side of the petrol pump of the petitioner, shops are also situated and, therefore, keeping in view the safety of vehicular traffic, the service roads have been provided with access on the highways at the convenient places. The learned counsel for the respondent further pointed out that decision was taken by the expert body in the public interest in relation to the almost about 6,000 kms. road of National importance and it will be not proper to examine the grievance of the petitioner with reference to any isolated example of not putting the barricades for one or two properties as it will lead to investigation into the facts relating to the very many properties and even if it is found that somewhere a barricade could have been installed but has not been

installed, that does not mean that the petitioner is also entitled for that benefit which could not have been given to any body. It is also submitted that the situation can be well examined from Annx. R/2/1 which clearly shows that there are two petrol pumps in the same line on the same road and they have been treated at par by the authorities. It is also submitted that there is no basis to allege that any access has been given to them without any reason. The learned counsel for the respondent relied upon the judgments of the Hon'ble Supreme Court delivered in the cases of K. Malliah vs. S. Bal Reddy and others (AIR 1988 SC 1681), B.N. Shankarappa vs. Uthanur Srinivas and others ((1992) 2 SCC 61) and K.V. Rajalakshmiah Setty and another vs. State of Mysore and another (AIR 1967 SC 993) as well as Division Bench decision of this Court delivered in the case of Onkar Ram & Ors. vs. State of Rajasthan & ors. (D.B.Civil Writ Petition No.2080/2004 decided on 8.10.2004.

I considered the submissions of the learned counsel for the parties.

The grievance of the petitioner is short one and the allegation of the petitioner against respondent no.2 is of acting of extraneous considerations and motives and treating the petitioner in discriminatory manner. To show that respondent no.2 has acted for extraneous

considerations, there appears to be no evidence available on record. What is the motive to harm the petitioner, is also not clear from either the pleading or from any document. So far as the allegation of discrimination is concerned, it is clear from map (Annx.R/2/1) that the petrol pump of the petitioner as well as one more petrol pump are situated in equal distances from the Dabok junction. It is not the case of the petitioner that barricades have not been in front of the other petrol pump and the respondents are putting barricades against the petitioner's petrol pump. The petitioner's own case is that in both the sides near the petrol pump, there are large number of shops and because of the parking of the vehicles, there is congestion. Respondent no.2 prescribed the service lane for approaching fuel station where the same is localed in populated area or with surrounding shops and other establishments etc. Since it has been done in accordance with the policy guided by the norms then the construction of service lane cannot be condemned and has not been objected by the petitioner. Since, admittedly, the service lane will be much below the height of the level of the National Highway, therefore, there cannot be any direct access to the petrol pump from the National Highway. The respondent no.2 placed on record the photographs Annx. R/2/2 which also reveals that barricades have been put against the various petrol pumps on this very highway and in view of the above fact, it cannot be said that any case of discrimination is made

out and the action of respondent no.2 is with any ulterior motive.

Apart from above, it appears that the Act has been enacted which is Control of National Highways (Land and Traffic Act), 2002 giving powers to the authorities to take decision with respect to the traffic and to regulate and divert any, not only proposed but existing access to the highway. Sub-section (2) of Section 30 of the aforesaid Act of 2002, further provides that where an existing access is diverted, the alternative access given in lieu thereof shall not be unreasonably distant from the existing access. The petitioner has been provided access through side lane situated no far away as it is only 125 meters approximately away from the petitioner's petrol pump. If the expert persons have examined the matter of providing way and access to the petitioner's petrol pump through a service lane, then the allegations of the petitioner appears to be founded only on the basis of his own difficulties without there being factual foundation for malafides or reasons to believe that the authorities have exercised the power with an ulterior motive. This Court has no reason to believe even for a moment that all has been done by the authorities with an ulterior motive. Normally the process of taking decision with respect to a big project, lies with large number of persons then such decision should normally be presumed to be taken after due care and caution and within the powers

available to the authorities and, in such situation, the person feeling difficulties is required to place on record not only the pleading but also proof to demonstrate that there exists reasons to believe that the action purported to be taken, is motivated by extraneous considerations or malafides. This burden is heavier when there are personal interest and public interest claimed by the rival parties. The petitioner says that the service land approach has been provided from a distance of one kilometer, but when the petitioner himself placed on record not only various photographs of his own petrol pump but also the photographs of other petrol pump and photographs of other properties but did not gave the correct distance of opening of service lane which he could have submitted correctly, then the mentioning of wrong fact of having a distance of one kilometer is significant. The respondents, in their reply, categorically stated that the answering respondents have installed and installing railings against other fuel station also but that fact has not been disclosed by the petitioner for which he cannot say that he did not notice it. Therefore, it appears that the difficulties likely to be suffered by the petitioner must have prompted the petitioner to level the allegations of discrimination etc.

Apart from above, there appears to be no reason for this Court to decide the disputed questions of fact which the petitioner wants to

raise in this writ petition by saying that whether the approach can be provided to the petitioner's petrol pump from the highway itself and whether it will not cause any traffic hazard and will not be against the public interest, therefore, this Court is not inclined to go into all these questions which have been raised by the petitioner.

In view of the above, there is no merit in this writ petition and hence the same is hereby dismissed.

(PRAKASH TATIA),J.

mlt.